



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,721	09/22/2000	Victor Kaufman	2718.1	2233

5514 7590 10/21/2003

FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER
----------

FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
----------	--------------

3624

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/668,721**

Applicant(s)  
**Kaufman**

Examiner  
**Daniel Felten**

Art Unit  
**3624**

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Sep 22, 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 & 6 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims cite, *"purchasing and/or selling an interest whose return is related to the performance of an Entertainment Production"*, By "performance", does the applicant mean the performance based upon market factors such as the demand for the entertainment product/production, or does the "performance" refer to the quality, standard or achievement of the entertainment production? For examination purposes, the examiner has chosen the former definition in rejections that have been made below.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1 4. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiser et  
2 al (hereinafter "Keiser", US 5,950,176).

3  
4 **Re Claims 1, 4, 7-10, 13-16:**

5 Keiser discloses a system, apparatus and method for purchasing and/or selling an interest whose  
6 return is related to the performance of an Entertainment Production (see Keiser, Abstract),  
7 comprising:

8 a transaction server for transmitting and generating network data for a display of a *bid* to  
9 purchase a first interest in a share of the proceeds received by an intermediary, such proceeds  
10 being made related to a payout pursuant to a second interest sold by an entertainment company,  
11 where such payout is related to the performance of the Entertainment Production, said transaction  
12 server adapted to transmit such data via a network (see Keiser, Abstract; col. 1, ll. 40-47; col. 2,  
13 ll. 62 to col. 3, ll. 50); and

14 having and receiving a plurality of information appliances, each adapted to receive via  
15 the network such data, and further adapted to transmit to the transaction server via the network, a  
16 user acceptance of such an offer and processing at the transaction server the acceptance data.(see  
17 Keiser, col. 2, ll. 18+; and col. 4, ll. 18+).

18 Keiser fails to disclose an offer to purchase. However, it is inherent within the Keiser  
19 invention that the definition of a *bid* precludes the fact that a person *has* made an offer to  
20 purchase because of fulfilment of the general requirements that constitute an offer, those being:  
21 (1) a communication of the proposal to the intended offeree, (2) an indication of what the offeror  
22 and offeree are to do, (3) binding of the bid upon acceptance of offeree. Thus an artisan of

1 ordinary skill in the art would have recognized that the disclosed bids made within the Keiser  
2 invention are art recognized equivalence to the offers disclosed by applicant, having no  
3 unexpected results to one of ordinary skill in the art.  
4

5 **Re Claims 2 and 5:**

6 Keiser discloses wherein said data further comprises an electronic link to a display of  
7 information regarding an entertainment company (see col. 2, ll. 32-61).  
8

9 **Re Claims 3 and 6:**

10 Keiser discloses wherein the network comprises the Internet (see col. 3, ll. 54-64).  
11

12 **Re Claim 11 and 12:.**

13 Keiser discloses an apparatus and method for viewing and accepting a bid to purchase an interest  
14 having a return related to the performance of an Entertainment Production, comprising: an  
15 information appliance comprising a user operable input device, an output user-interface for  
16 enabling a user to perceive information, memory for the storage of programs and data and a  
17 processor for the execution of program steps 12 (see Keiser, fig.1, *client computer*, col. 3, ll.  
18 54+);

19 said memory including program steps for generating a display, and further including  
20 display data received via a network from a transaction server, which display data communicates  
21 an offer to purchase, via the output user-interface, a first interest in a share of the proceeds  
22 received by an intermediary, such proceeds being related to a payout made pursuant to a second

1 interest sold by an entertainment company, where such payout is related to the performance of  
2 the Entertainment Production, and which display data enables the user to accept such a bid via  
3 the user operable input device for transmission via the network to a transaction server (see  
4 Keiser, col. 4, ll. 18+; and explanation to claim 1 above).

5  
6 **Conclusion**

7  
8 5. A list of relevant prior art appears below not relied upon in this Office Action:

9 **Non-Patented Literature:**

10 Hollywood Stock Exchange (www.hsx.com)

11 6. Any inquiry concerning this communication or earlier communications from the examiner  
12 should be directed to **Daniel S. Felten** whose telephone number is (703) 305-0724. The  
13 examiner can normally be reached between the hours of 7:00AM to 5:30PM Monday-Thursday.  
14 Any inquiry of a general nature relating to the status of this application or its proceedings should  
15 be directed to the Customer Service Office (703) 306-5631, or the examiner's supervisor  
16 **Vincent Millin** whose telephone number is (703) 308-1065.

17  
18 7. Response to this action should be mailed to:

19  
20 Commissioner of Patents and Trademarks

21 Washington, D.C. 20231


22  
23 for formal communications intended for entry, or (703) 305-0040, for informal or draft  
24 communications, please label "Proposed" or "Draft".

1 Communications via Internet e-mail regarding this application, other than those under 35  
2 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be  
3 addressed to *[daniel.felten@uspto.gov]*.

4 All Internet e-mail communications will be made of record in the application file. PTO  
5 employees do not engage in Internet communications where there exists a possibility that  
6 sensitive information could be identified or exchanged unless the record includes a properly  
7 signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly  
8 set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and  
9 Trademark on February 25, 1997 at 1 195 OG 89.

10  
11  
12 

13 **DSF**  
14 **October 8, 2003**



**HANI M. KAZIMI**  
**PRIMARY EXAMINER**